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NEW APPLICATION
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BEFORE THE ARIZONA CORPORATION COMMISSION

AZ CORP COMMISSION
DOCKET CONTROL

COMMISSIONERS

MIKE GLEASON, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

In the matter of:

SOUTHERN HOMES, L.L.C., an Arizona
limited liability company;

CHARLES BRUCE FERGUSON and JANE
DOE FERGUSON, husband and wife,

Respondents.

DOCKET NO. S-20610A-08-0438

NOTICE OF OPPORTUNITY FOR HEARING
REGARDING PROPOSED ORDER TO
CEASE AND DESIST, FOR RESTITUTION,
FOR ADMINISTRATIVE PENALTIES, AND
FOR OTHER AFFIRMATIVE ACTION

NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that SOUTHERN HOMES, L.L.C. and CHARLES BRUCE FERGUSON have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

I.

JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

Arizona Corporation Commission
DOCKETED

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II.**RESPONDENTS**

2. SOUTHERN HOMES, L.L.C. is a manager-managed, Arizona limited liability company with a last known principal place of business in Maricopa County, Arizona.

3. CHARLES BRUCE FERGUSON ("FERGUSON") is an individual last known to reside in Maricopa County, Arizona. FERGUSON is a member and the sole manager of SOUTHERN HOMES.

4. JANE DOE FERGUSON has been at all relevant times the spouse of FERGUSON and may be referred to as "Respondent Spouse." Respondent Spouse is joined in this action under A.R.S. §44-2031(C) solely for purposes of determining the liability of the marital community.

5. At all relevant times, FERGUSON has been acting for his own benefit and for the benefit or in furtherance of the marital community.

6. SOUTHERN HOMES and FERGUSON may be referred to collectively as "Respondents."

7. At all times relevant, Respondents were not registered with the Commission as securities dealers or salesmen.

III.**FACTS**

8. From on or about December 2005 to February 2008 within or from Arizona, Respondents offered and sold unregistered securities in the form of investment contracts and limited liability company membership interests in SOUTHERN HOMES.

9. In February 2008, FERGUSON sold \$15,000 worth of investment contracts to two investors (collectively "the Bank Investors"). FERGUSON represented that he would pool their money together with that of other investors to make up a \$300,000 fee required by a foreign bank to obtain a \$10 million line of credit. FERGUSON represented that he was investing their money

1 in "medium term notes" involving a "bank trading platform" and that he would pay them \$5,000
2 profit for doing nothing other than paying him the money.

3 10. FERGUSON provided no documentation whatsoever to the Bank Investors
4 regarding their investment and he failed to provide them with any disclosures about their
5 investment including, but not limited to, which "foreign bank" would be involved, how the
6 investment would generate the promised profit, and whether there were any risks associated with the
7 investment.

8 11. When the Bank Investors sought their profit, FERGUSON told them that the foreign
9 bank had been "blacklisted." Unbeknownst to the Bank Investors, FERGUSON deposited their
10 money into his personal bank account, did not pay it to a foreign bank, and spent some of it on
11 personal expenses. FERGUSON has provided the Bank Investors with neither their principal
12 investment nor any of the promised profit.

13 12. Between December 2005 and February 2006, FERGUSON sold \$135,000 worth of
14 limited liability company membership interests in SOUTHERN HOMES to four Arizona investors
15 (collectively "the Condo Investors"). In exchange for the payment of \$50,000 to SOUTHERN
16 HOMES by one of the Condo Investors, FERGUSON gave him a certificate of ownership of five
17 units of SOUTHERN HOMES.

18 13. FERGUSON represented that the Condo Investors' money would be used by
19 Respondents to purchase an apartment building that would be converted by Respondents into
20 condominiums to be sold by Respondents for profit that would be distributed to the Condo
21 Investors. Other than paying Respondents, the Condo Investors had no duties to perform or
22 responsibilities to fulfill in order to receive their promised profit. In fact, pursuant to the operating
23 agreement of SOUTHERN HOMES, they were specifically not allowed to act on behalf of or manage
24 in any way SOUTHERN HOMES.

15. On April 11, 2006 (after the cancellation of escrow), one of the Condo Investors wrote a letter to FERGUSON listing concerns about his investment and requesting a refund. This investor received a letter dated April 13, 2006 from "**John A. Kutac**" on what appeared to be the letterhead of Western Capital Partners, LLC, the prospective lender on the apartment-to-condo conversion project. The letter addressed the concerns and explained that the project is ongoing, that FERGUSON spent this investor's money on the project, and that the investment cannot be refunded. FERGUSON wrote this letter on letterhead he created and he attempted to sign as **John D. Kutac** but he got the middle initial wrong.

17 17. Even though the Condo Investors were told that their money would be spent only on
18 the apartment-to-condo conversion project, FERGUSON spent some of their money on personal
19 expenses. FERGUSON has provided the Condo Investors with neither their principal investment
20 nor any of the promised profit.

VIOLATION OF A.R.S. § 44-1841

24 18. From on or about December 2005 to February 2008 within or from Arizona,
25 Respondents offered and sold securities in the form of investment contracts and limited liability
26 company membership interests.

V.

(Transactions by Unregistered Dealers or Salesmen)

22. This conduct violates A.R.S. § 44-1842.

VI.

(Fraud in Connection with the Offer or Sale of Securities)

a) Misrepresenting to the Bank Investors that their money would be paid to a foreign bank;

b) Assuming the identities of John D. Kutac of Western Capital Partners, LLC and Mary Fedt of the Investigations Department of Washington Mutual then sending a fake letter and false emails as these people to investors; and,

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24. This conduct violates A.R.S. § 44-1991.

VII.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

1. Order Respondents to permanently cease and desist from violating the Securities Act pursuant to A.R.S. § 44-2032;

2. Order Respondents to take affirmative action to correct the conditions resulting from Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;

3. Order Respondents to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

4. Order that the marital communities of FERGUSON and Respondent Spouse are subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action pursuant to A.R.S. § 25-215; and,

5. Order any other relief that the Commission deems appropriate.

VIII.

HEARING OPPORTUNITY

Each respondent, including Respondent Spouse may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. **If a Respondent or a Respondent Spouse requests a hearing, the requesting respondent must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. The requesting respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

1 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin
2 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the
3 parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission
4 may, without a hearing, enter an order granting the relief requested by the Division in this Notice of
5 Opportunity for Hearing.

6 Persons with a disability may request a reasonable accommodation such as a sign language
7 interpreter, as well as request this document in an alternative format, by contacting Linda Hogan,
8 ADA Coordinator, voice phone number 602/542-3931, e-mail lhogan@azcc.gov. Requests should
9 be made as early as possible to allow time to arrange the accommodation.

10 IX.

11 ANSWER REQUIREMENT

12 Pursuant to A.A.C. R14-4-305, if a Respondent or a Respondent Spouse requests a hearing,
13 the requesting respondent must deliver or mail an Answer to this Notice of Opportunity for
14 Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix,
15 Arizona 85007, within 30 calendar days after the date of service of this Notice. Filing instructions
16 may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet
17 web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

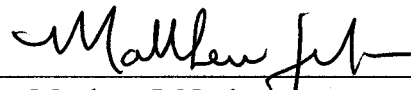
18 Additionally, the answering respondent must serve the Answer upon the Division.
19 Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-
20 delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix,
21 Arizona, 85007, addressed to Aaron S. Ludwig.

22 The Answer shall contain an admission or denial of each allegation in this Notice and the
23 original signature of the answering respondent or respondent's attorney. A statement of a lack of
24 sufficient knowledge or information shall be considered a denial of an allegation. An allegation
25 not denied shall be considered admitted.

1 When the answering respondent intends in good faith to deny only a part or a qualification
2 of an allegation, the respondent shall specify that part or qualification of the allegation and shall
3 admit the remainder. Respondent waives any affirmative defense not raised in the answer.

4 The officer presiding over the hearing may grant relief from the requirement to file an
5 Answer for good cause shown.

6 Dated this 21st day of August 2008.

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10 Matthew J. Neubert
11 Director of Securities
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